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Applicant	: Don Kennard	
App. No	: 10/691,470	
Filed	: October 22, 2003	
For	: IMMEDIATE PROVISIONAL IMPLANT	
Examiner	: Singh, Sunil K.	
Art Unit	: 3732	

**APPELLANT'S REPLY BRIEF**

**Mail Stop Appeal Brief-Patents**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

Applicant (Appellant herein) replies to the Examiner's Answer to Appellant's Appeal Brief. Appellant submits that this Reply should be considered with Appellant's Appeal Brief.

**Status of Claims** begins on page 2 of this paper.

**Grounds of Rejection to be Reviewed on Appeal** begin on page 2 of this paper.

**Arguments** begin on page 3 of this paper.

## **I. STATUS OF CLAIMS**

Claims 39-57 and 62 are currently pending in the application and are the subject of this appeal. Claims 1-38, 58-61 and 63-69 were previously cancelled. All of the pending claims were rejected in the final Office Action having a notification date of March 3, 2010.

Claims 39, 40, 43, 44, 48, 56, 57 and 62 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,520,540 issued to Nardi. Claims 41, 42, 45-47, 49-52 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nardi in view of U.S. Patent No. 5,074,790 issued to Bauer. Claims 53-55 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nardi in view of U.S. Patent No. 3,466,748 issued to Christensen.

Examiner has made a new grounds of rejection, whereby Claims 39, 40, 43, 44, 48, 56, 57 and 62 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,520,540 issued to Nardi.

## **II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

As the grounds of rejection for review:

1. (New Grounds of Rejection) Whether Claims 39, 40, 43, 44, 48, 56, 57 and 62 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 5,520,540 issued to Nardi?
2. Whether Claims 39, 40, 43, 44, 48, 56, 57 and 62 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 5,520,540 issued to Nardi?
3. Whether Claims 41, 42, 45-47 and 49-52 are unpatentable under 35 U.S.C. § 103(a) over Nardi in view of U.S. Patent No. 5,074,790 issued to Bauer?
4. Whether Claims 53-55 are unpatentable under 35 U.S.C. § 103(a) over Nardi in view of U.S. Patent No. 3,466,748 issued to Christensen?

### III. ARGUMENT

#### A. The New Obviousness Rejection of Claims 39, 40, 43, 44, 48, 56, 57 and 62 over Nardi Is Incorrect

Claims 39, 40, 43, 44, 48, 56, 57 and 62 stand rejected as being obvious over Nardi. Examiner makes this new grounds of rejection “to clarify by further defining what the Examiner is calling the ‘abutment’ element in Nardi et al.’s patent.” Examiner’s Ans. 8. Specifically, Examiner refers to element 1 of Nardi (See Fig. 6 below) as the abutment. Previously, Examiner referred to element 4 of Nardi (See Fig. 6 below) as the abutment. Examiner now refers to element 4 in this new ground of rejection as the “superstructure” that attaches to the abutment 1. *Id.* Examiner further notes that element 2b of Nardi refers to a neck portion that is “capable of being bent if enough pressure is placed on that portion.” *Id.* at 9.

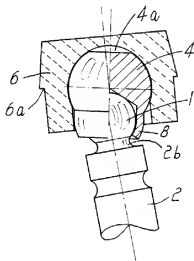


FIG. 6 of Nardi (5,520,540)

Appellant respectfully submits that Examiner’s characterization of Nardi conflicts with the disclosure contained within Nardi. For example, there is no teaching or suggestion that pin (2) is designed to be bent during implantation to adjust to a patient’s treatment condition. Instead, Nardi intends for any such adjustments to be performed using the ball and socket arrangement of the male element (1) and the connecting element (4):

By virtue of the coupling, which allows a certain degree of rotation with respect to the male element 1, the connecting element 4 performs an angular rotation with

respect to the axis of the pin 2 so as to find exact reference with respect to the cap 6 (FIG. 3).

Nardi, 3:38-43.

Further, if element 1 is considered to be the abutment, then the limitation “an abutment adapted to bond with a dental prosthesis” in Claim 39 is not anticipated nor rendered obvious by Nardi. In Nardi, the sole purpose of element 1 is to mate with the socket of element 4. *See* Nardi, Fig. 6. There is no disclosure in Nardi that a dental prosthesis may be connected to element 1. To the contrary, Nardi discloses only dental prostheses (element 6) bonding with element 4. *See id.*

Examiner also repeats the assertion that bendable is a relative term, and that: “virtually anything will flex/bend if enough pressure is applied to it.” Examiner’s Ans. 9. Appellant reiterates that the applicable limitation in Claim 39 is “sufficiently bendable such that while the body segment is positioned within a patient’s jawbone the bendable neck segment can be bent to adjust the angle of the abutment.” While it is axiomatic that anything is capable of being bent, the bending of element 2 at neck 2b as suggested by Examiner would harm the swiveling, ball and socket arrangement of Nardi by interfering with the full adjustment range of the connecting element 4. *Id.* at 5; *see* Nardi, Fig. 6.

**B. The Original Rejections Cannot Be Maintained In Light Of Examiner’s New Grounds Of Rejection**

In light of Examiner’s new characterization of Nardi, Appellant respectfully submits that the original grounds of rejection set forth in the Office Action dated August 13, 2009 cannot be maintained. Examiner originally referred to element 4 of Nardi as the abutment. *See* Nardi, Fig. 6. Appellant believes that this is a more natural interpretation of Nardi because element 4 can be seen bonded to element 6, referred to as “a cap”. *See* Nardi, 2:46; Fig. 6. As discussed, there is no teaching or suggestion that a dental prosthesis may be connected or bonded to element 1.

Therefore, Appellant submits that Examiner’s new grounds of rejection conflicts with the original grounds of rejection. To the extent that Examiner is relying on the new grounds of rejection of Nardi in combination with the original grounds of rejection of Claims 41, 42, 45-47 and 49-52 based on Bauer and Claims 53-55 based on Christensen, the arguments regarding Nardi in this Reply Brief should be considered with the arguments set forth for these combinations of prior art discussed in the Appeal Brief. To the extent that Examiner is relying solely on the

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original grounds of rejection, because of the conflicting characterizations of Nardi, those arguments have been set forth in the Appeal Brief.

**C. Conclusion**

For at least the reasons explained above, Appellant respectfully submits that the rejections of Claims 39-57 and 62 are improper and should be reversed. Please charge any additional fees that may be required to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 17, 2010

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